



STATE OF MISSOURI
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF:)	
)	
DOUGLAS BAGWELL; and)	
DOUGLAS BAGWELL & CO., LLC,)	
)	
<i>Respondents.</i>)	Case No. AP-16-28
)	
Serve: Douglas Bagwell at:)	
3924 N. Broadway Avenue)	
Springfield, Missouri 65803)	
)	
Douglas Bagwell & Co., LLC at:)	
2200 East Sunshine Street, Suite 324)	
Springfield, Missouri 65804)	

**ORDER TO CEASE AND DESIST AND ORDER TO SHOW CAUSE WHY
RESPONDENTS SHOULD NOT BE CENSURED, AND WHY CIVIL PENALTIES,
COSTS, AND OTHER ADMINISTRATIVE RELIEF SHOULD NOT BE IMPOSED**

On September 20, 2016, the Enforcement Section of the Missouri Securities Division of the Office of Secretary of State (“Enforcement Section”), through Enforcement Counsel Ryan D. Smith, submitted a Petition for Order to Cease and Desist and Order to Show Cause why Civil Penalties, a Censure, Costs, and Bars/Conditions Should not be Imposed (“Petition”). After reviewing the Petition, the Commissioner issues the following order:

I. ALLEGATIONS OF FACT

The Petition alleges the following facts:

A. Respondents and Related Parties

1. Douglas Bagwell & Co., LLC (“DBC”) has been a Missouri registered investment adviser (“IA”) since August 30, 2005, and has an address of 2200 East Sunshine Street, Suite 324, Springfield, Missouri 65804. DBC is registered in Missouri through the Central Registration Depository (“CRD”) with number 134485.
2. Douglas R. Bagwell (“Bagwell”) filed an application for registration as an investment

adviser representative (“IAR”) in Missouri on May 11, 2005, and has been a Missouri registered IAR with DBC since August 30, 2005. Bagwell maintains a business address of 2200 E. Sunshine Street, Suite 324, Springfield, Missouri 65804, and a residential address of 3924 N. Broadway Avenue, Springfield, Missouri 65803. Bagwell is registered in Missouri through the CRD with number 4219659.

3. Bagwell is the Chief Executive Officer and Chairman of the Board of DBC. Bagwell was subject to a Missouri Consent Order on July 8, 2005, for, among other things, engaging in unregistered activity (see AP-05-28).
4. A check of the records of the Missouri Department of Insurance, Financial Institutions & Professional Registration (“DIFP”), indicates Bagwell has never held a license to sell insurance in the State of Missouri.
5. BKD, LLP (“BKD”) is an accounting and advisory company headquartered in Springfield, Missouri.

B. Exams Section’s Review of DBC and Enforcement Section’s Investigation

i. April 30, 2012 Examination of DBC

6. On April 30, 2012, the Examinations Section of the Missouri Securities Division of the Office of Secretary of State (“Exams Section”) conducted an unannounced examination of DBC.
7. During the examination of the books and records of DBC, the Exams Section discovered that DBC failed to generate and retain true, accurate and current financial records relating to its advisory business, as represented by the following inconsistencies, among others:
 - a. Bagwell omitted information from the Exams Section about investors in DBC;
 - b. DBC’s financials overstated DBC’s assets and did not include depreciation of assets in accordance with Generally Accepted Accounting Principles (“GAAP”);
 - c. Bagwell listed a rental house, not titled in the name of DBC, as an asset of DBC on DBC’s financial documents but not as a liability, which was not in accordance with GAAP; and
 - d. Bagwell did not list two DBC mortgages, which understated DBC’s liabilities.
8. On October 12, 2012, Bagwell provided a response to the Exams Section’s request for more information. In his letter, Bagwell admitted to the following errors regarding the financial statements provided during the exam:
 - a. certain capital contributions to DBC were categorized incorrectly;

- b. banking records were incorrectly downloaded;
 - c. depreciation was not accurately reflected on the financials;
 - d. retained earnings reflected progressive declines when actual results may have been positive;
 - e. bank accounts were opened using an incorrect tax identification number; and
 - f. cash contributions to the firm by Bagwell may have been classified incorrectly.
9. Bagwell re-calculated the financial statements, which showed that DBC's net worth (assets minus liabilities) equaled *negative* \$10,307.93 for 2012.
10. Bagwell informed the Exams Section that he would be converting debt to equity to cure the negative net worth.
11. Bagwell also had engaged the services of BKD to re-enter and reclassify some of DBC's transactions and to help prepare revised financial reports. However, the scope of BKD's services was limited as indicated in BKD's letter of engagement with DBC dated October 12, 2012. BKD clarified the scope of their work by stating, among other things, that:
- “[t]his engagement is not intended to be an audit, review or compilation of financial statements in accordance with standards issued by the American Institute of Certified Public Accountants. Accordingly, our firm name should not be associated with your internal financial statements.”
12. Despite the wording of the engagement letter that said “[BKD's] name should not be associated with [DBC's] internal financial statements,” on December 28, 2012, DBC and Bagwell provided these financial statements to the Missouri Securities Division.
13. In support of the tax characterization of a rental house listed on DBC's financial statements that was not titled in DBC's name, Bagwell produced three documents, which can be described as follows:
- a. A “Resolution of Board of Directors of DouglasBagwell Corporation” that describes the purchase of a single family dwelling “for the sum of \$1.00 and the assumption of outstanding mortgage and notes of property totaling \$106,500.00.” The resolution of the board of directors took place on September 5, 2006 and bears the signature of . . . as “Secretary”;
 - b. A “Lease Agreement” between lessor . . . and DBC, as tenant from January 2007 to January 2037 with a First Month's rent of \$0.00, and a Security Deposit of \$0.00, and nothing listed for additional charges/fees, for a total payment of \$0.00. All payments are to be made payable to the mortgage holders. This “Lease Agreement” is signed by lessor and a signature that appears to bear Bagwell's

name on September 5, 2006. The “lease agreement” only mentions that “all monthly payments will be paid directly to the mortgage holders” without specifying who the mortgage holders are and without specifying the amount that will be paid to them; and

- c. A “Lease to Purchase Option Agreement” with an option term between January 1 2007 and January 1, 2037. The consideration for the option is “a non-refundable fee of \$1.00.” The purchase price for the property is \$106,500 with \$982.92 being credited to the purchase price each month. The document bears lessor/owner’s signature and Bagwell’s signature.

ii. Investors in DBC

- 14. During the April 20, 2012 exam, it was discovered that six investors had invested in DBC. Three of the investors were family members, two were investment advisory clients, and one did not appear to have any prior affiliation with DBC.
- 15. For some of the securities in DBC offered by Bagwell as the CEO of DBC, Bagwell sometimes attempted to rely on Regulation D as an exemption to registering DBC securities.
- 16. The Enforcement Section found evidence that DBC generally solicited through DBC’s website at the time of the security offerings.
- 17. DBC’s website contained an investor relations section that offered the purchase of preferred stock and senior notes in DBC.
- 18. In addition, the Enforcement Section could not find any form D filings on the SEC’s Edgar database as of the date of the Petition.

a. Missouri Resident 1

- 19. On November 3, 2003, Bagwell issued a 51-year-old Sparta, Missouri resident (“MR1”) a series of promissory notes for varying lengths of time. The following is a description of the notes:
 - a. Note 1 for \$1,000 for 36 months at 4.75%;
 - b. Note 2 for \$1,000 for 48 months at 4.75%;
 - c. Note 3 for \$1,000 for 60 months at 4.75%;
 - d. Note 4 for \$1,000 for 72 months at 4.75%; and
 - e. Note 5 for \$1,000 for 84 months at 4.75%.

20. The above-described notes were written on letterhead displaying a “DouglasBagwell & Co. Investment Advisor” logo. However, at the time the notes were issued, DBC and Bagwell were not registered in Missouri as either an IA or IAR. Bagwell told the Exams Section that MR1’s investment of \$5,000 was “to provide start-up capital to support the creation and development of DBC.”
21. On January 15, 2005, MR1 signed a client agreement for portfolio advisory services with DouglasBagwell & Co. Advisor Services. DouglasBagwell & Co. Advisor Services is not a registered IA on the CRD system and was not included as an “other business name” on Schedule D, Section 1B, of the Form ADV for DBC filed on April 20, 2005. In addition, at the bottom of the signature page the agreement states: “DouglasBagwell & Co. Advisor Services, Division of DouglasBagwell & Co., a registered investment advisor, state of Missouri.”
22. On September 27, 2006, DBC entered into a “Cumulative Preferred Stock Purchase Agreement” with MR1 for 106 shares of DBC preferred stock for \$10,000. MR1 indicated on this form that MR1 was an accredited investor.
23. On November 1, 2009, MR1 and DBC entered into a note for \$16,359.37 at 7.5%. This note is titled “Renewed Note” and references another note dated January 31, 2005, for \$16,359.37. Bagwell did not produce the January 31, 2005 note to the Exams Section, nor did he provide any details explaining this note.
24. Lastly, the “Renewed Note” contains a “Conflicts of Interest Disclosure” indicating the purchase or holding of the note was not solicited to clients of DBC. At the time of entering into the note, MR1 had executed an advisory agreement with an unregistered entity under the control of Bagwell.
25. On January 1, 2010, DBC signed promissory note #009 with MR1 for \$16,359.37 for 7.5%. According to Bagwell’s response to the Exams Section on October 12, 2012, this note represented MR1’s \$15,000 initial investment plus accumulated interest. However, the amount of this note is the same as the principal amount of the November 1, 2009 note.
26. On December 6, 2011, DBC and MR1 entered into a subscription agreement to purchase 20 shares of DBC common stock for \$3,209.20.
27. During the April 30, 2012 exam, it was discovered that MR1’s client file, dated July 1, 2009, contained several annuities under the managed account section. However, as of August 24, 2016, Bagwell was not registered to sell insurance in Missouri and the Petition alleges that Bagwell was not licensed to sell insurance during any time relevant to this matter.
28. DBC and Bagwell produced a debt-to-equity conversion agreement dated December 20, 2012, converting the amount owed of \$16,359.37 to equity, and MR1 signed this agreement.

b. Missouri Resident 2

29. On August 15, 2008, a 62 year-old St. Robert, Missouri resident (“MR2”) signed a Client Application & Agreement for Total Portfolio Management Services with DBC.
30. On January 31, 2009, MR2 invested \$15,280 in DBC. In his October 12, 2012 response to the Exams Section, Bagwell stated that he was unable to locate the note applicable to MR2’s investment, but provided bank records showing a \$15,280 deposit.
31. Bagwell also stated that MR2 was an accredited investor that inquired about private investment opportunities. Bagwell described MR2 as an “angel investor” for other start-up companies. Bagwell told MR2 that “DBC was offering short-term promissory notes with an 8% rate of interest.”
32. On October 30, 2009, the note was renewed paying 8% interest. This note contained a “Conflicts of Interest Disclosure” indicating the purchase or holding of the note was not solicited to clients of DBC.
33. On January 31, 2010, DBC entered into a promissory note with MR2 for \$18,030.40 at 8% interest. In his October 12, 2012 response letter to the Exams Section, Bagwell indicated this amount included the initial amount plus accumulated interest.
34. DBC and Bagwell produced a debt-to-equity conversion agreement dated December 20, 2012, converting the amount owed of \$18,030.40 to equity, and MR2 signed this agreement.

c. Missouri Resident 3

35. In or around 2009, Bagwell solicited a 67 year-old Springfield, Missouri resident (“MR3”) to become a client with DBC. In addition, Bagwell told MR3 that DBC was offering promissory notes paying 8% interest.
36. On January 31, 2009, MR3 invested \$4,300 in DBC. In his response letter to the Exams Section on October 12, 2012, Bagwell said he was unable to locate the note applicable to MR3’s investment, but provided bank records showing a \$4,300 deposit.
37. On October 30, 2009, MR3’s note was renewed. This note contained a “Conflicts of Interest Disclosure” indicating the purchase or holding of the note was not solicited to clients of DBC. MR3 was not an advisory client of DBC.
38. On January 31, 2010, DBC entered into promissory note #009 with MR3 for \$4,816 at 8% interest. According to Bagwell’s response to the Exams Section on October 12, 2012, this note represented MR3’s initial investment plus accumulated interest.
39. DBC and Bagwell produced a debt-to-equity conversion agreement dated December 20, 2012, converting the amount owed of \$2,316 to equity, and MR3 signed this agreement.

iii. Omissions and Inconsistencies in the Debt-to-Equity Conversion Agreement and Private Placement Memorandum

40. On December 26, 2012, Bagwell wrote a letter to the Exams Section stating that “the company’s net capitalization was -\$10,308.” Bagwell wrote, “[i]n consulting with BKD and our legal counsel we are currently converting these notes into preferred equity with the company. These forms are attached and as of the date of this letter we have already converted [a note] bringing the net capitalization of the company up by \$20,000. We intend to have these completed by January 31, 2013.”
41. Bagwell produced to the Enforcement Section a copy of his “private placement memorandum” dated December 20, 2012, and various debt-to-equity conversion agreements that were the same in every respect except for the fact that all the signature blocks had the respective names of the investors, including MR1, MR2, and MR3.
42. The debt-to-equity conversion agreement and the private placement memorandum were notable in several ways:
 - a. Even though DBC’s own analysis showed they had a negative net worth, the debt-to-equity conversion agreement states that “the Company may *increase its positive net capitalization* requirements as a Registered Investment Adviser[.]” (emphasis added).
 - b. The debt-to-equity conversion agreement states “[t]he Company’s wishes to deleverage its balance sheet by converting these notes into preferred equity.”
 - c. The debt-to-equity conversion agreement states that “the Company has authorized 150 shares of Preferred stock, of which no shares are issued and outstanding . . .” However, the private placement memorandum states that 200 shares are authorized to be issued.
 - d. The debt-to-equity conversion agreement warrants that “No broker, finder or investment banker is entitled to any brokerage, finder’s or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company other than the fees of any investment banking firm that has been engaged by the Company to render the Fairness Opinion (defined below), the fees of which will be paid by the Company.” However, the private placement memorandum describes, among other things:
 - i. a \$10,000 commission from the offering of stock noting that “one or more registered broker-dealers may act as placement agent to assist in the placement of the Shares. In addition to a placement agent fee of 2.0%, any broker-dealer who assists in the placement of this offering will receive a sales commission of up to 7.0% of the purchase price sold by such broker-dealer. . .”;

- ii. in addition to the commissions and placement fee, broker dealers may receive “a non-accountable due diligence reimbursement of 1.0% of the purchase price of all Shares sold by such broker dealer. . .”; and
 - iii. upon information and belief, the commissions and placement fees will be paid “[b]efore any additional fees and expenses incurred by the Company for legal and other professional services connected with the offering.”
- e. The debt-to-equity conversion agreement states that “Since May 20, 2005, and except as disclosed in the SEC filings, [DBC] has conducted its business in compliance in all material respects with all applicable laws, rules, regulations, court or administrative orders and processes and rules, directives and orders of regulatory and self-regulatory agencies and bodies, except as would not reasonably be expected, singly or in the aggregate, to be materially adverse to the business, assets or financial condition of the Company.”
- However, at the time of the conversion, DBC was not in compliance “in all material respects with all applicable regulations” because, among other problems, DBC’s own financial reports showed that DBC was in violation of the net worth requirement in the State of Missouri.
- f. The debt-to-equity conversion agreement and the private placement memorandum omitted to disclose that DBC risked losing its registration if investors did not convert their debt to equity.
 - g. In both the debt-to-equity conversion agreement and the private placement memorandum, DBC references being exempt under Regulation D. However, the Enforcement Section could not find any Regulation D filings after a search of the SEC’s Edgar database.
 - h. The Enforcement Section also found that DBC’s website generally solicited investors to buy “preferred stock” and featured an opportunity for DBC to “forward our Private Offering Memorandum” to potential investors at the time of the debt-to-equity conversion.
 - i. In the private placement memorandum, DBC describes the use of the proceeds to add working capital and to “seek expansion in addition to other private equity acquisitions through direct purchase or through other affiliated private funds. Proceeds not used immediately will be held with the corporate capital reserves.”
 - j. In the private placement memorandum, DBC discloses that the shares would rank junior to existing debt; however, DBC does not disclose this risk in the debt-to-equity conversion agreement.
43. Through these debt-to-equity conversions and after the passage of time, DBC prepared revised financial reports for the Missouri Securities Division indicating a positive net

worth. However, the revised financial reports were not prepared in accordance with Missouri's regulations for certified financial reports.

iv. Omissions and Misrepresentations of Qualifications and Solicitation for Investors on DBC Website

44. As of October 16, 2009, Bagwell's website stated that Douglas Bagwell professionals:

“. . . specialize their advice in Capital Markets, Venture Capital, Corporate Finance, Financial Restructuring, Mergers & Acquisitions, Private Equity and Structured Products. Our dedicated teams work closely together to create tailored solutions for clients that are both innovative and effective. The deals we advise also reflect our entrepreneurial culture, and our belief that dedication, drive and innovation are critical to our success and the success of our clients.”

45. Additionally, Bagwell utilized business cards that purported to offer investment banking as a service Bagwell provided.

46. Upon review of Bagwell's registration and exams, Bagwell has not been affiliated with a broker-dealer since 2001, nor has he passed the Series 79 Investment Banking Representative Qualification Examination (“IB Exam”), an exam that, according to the Financial Industry Regulatory Authority (“FINRA”), “assesses the competency of an entry-level registered representative to perform his or her job as an investment banker.”

47. In addition, the Petition alleges that Bagwell has never been affiliated with any investment bank.

48. As of October 16, 2009, DBC's website contained a section titled “Investor Relations,” which stated that “common stock shares and preferred stock shares are sold . . . when they are offered, senior notes are offered at \$100 per bond. . .”

49. Additionally, information in this section referenced numerous corporate relationships that were not verifiable during the 2012 exam.

50. As of December 18, 2012, DBC's website contained a page titled “About Us,” making a reference to the Chartered Financial Analyst (“CFA”) Institute Code of Ethics and Standards of Professional Conduct and contained a copy of those standards. The Enforcement Section contacted the CFA Institute, which informed the Enforcement Section that Bagwell has never been awarded a CFA charter.

v. Bagwell's No-Load Annuity

51. As of October 16, 2009, DBC's website contained a reference to “The Douglas Bagwell No-Load Annuity.” The website states that the Bagwell No-Load Annuity:

“. . . works in conjunction with our arrangement with Ameritas Direct and

Jefferson National. These variable annuities have no front end sales charge and no surrender fees. The separate account is managed by Douglas Bagwell & Co. to suit the clients [sic] risk tolerance, investment goals, time horizon and tax strategies. This separate account will be actively managed in the same accordance as our five model portfolios[:] Capital Preservation, Income, Balanced, Growth and Aggressive Growth. . .”

52. However, in his response to the Exams Section on October 12, 2012, Bagwell stated, among other things, that:
- a. “DBC does not have a separate agreement with the annuity sponsors, such as Ameritas Direct and Jefferson National. Consequently, we have no contractual arrangement to provide you. . .”;
 - b. each client interested in the product “must sign a DBC advisory agreement to permit me to manage the subaccounts within the underlying investment, which is purchased for the client through DBC. . .”; and
 - c. Bagwell has “never received a commission for selling the Jefferson National annuities. Rather, I receive an advisory fee from my clientele pursuant to their written agreements with DBC and the carrier.”

vi. Multiple Failures to Disclose a Judgment

53. On April 23, 2003, a judgment and subsequent garnishment in the amount of \$1,433.11 was entered against Bagwell in *Asset Acceptance, LLC v. Douglas R. Bagwell*, case number 31303AC1729, Circuit Court of Greene County, Missouri. The judgment was satisfied on December 18, 2006.
54. In Form U4 filings under question 14M that asks, “Do you have any unsatisfied judgements or liens against you?” Bagwell answered “no” on May 11, 2005; July 13, 2005; July 15, 2005; and August 12, 2005.

vii. June 22, 2015 Request for Information

55. On June 22, 2015, the Enforcement Section requested, among other things, DBC’s financial reports prepared in compliance with Missouri’s regulations and supporting documentation evidencing steps taken to correct inconsistencies discovered in DBC’s financial statements by the Exams Section.
56. Bagwell responded by sending the exact documentation submitted to the Exams Section in 2012.
57. On November 5, 2015, DBC and Bagwell, through counsel, submitted another response addressing concerns of the Enforcement Section. Their response stated, among other things:

- a. DBC and Bagwell are not in violation of Rule 10(a)(4)-1(f) as it pertains to borrowing funds from clients and the loans were not to Bagwell personally but to DBC;
- b. in order to qualify for an exemption from registering the promissory notes as securities, Bagwell “. . . relied upon the exemption provided under 409.2-202(14), RSMo Cum. Supp. 2003”, as: (i) there were not more than 25 persons present in Missouri who invested within any twelve consecutive months; (ii) the security was not generally solicited or advertised; (iii) no commission or other remuneration was received by any person other than a broker-dealer registered under this act or an agent registered under this act for soliciting a prospective purchaser in this state; and (iv) Bagwell believed the Missouri investors were purchasing for investment purposes only;
- c. the leased property “is owned by the principal’s wife and the equity captured from this lease, which is quite considerable, is essentially our contribution to the company.”; and
- d. “This accounting method was confirmed and continued by BKD which is a registered public company account oversight board (“PCAOB”) accounting firm. This is a requirement for RIA’s with custody of client assets, however, we do not have custody of client assets, but choose to use a PCAOB firm and its accounting methodologies (“GAAP”). We are not required to have audited financials, but, the accounting methods we have put in place with BKD are comparable, in my opinion.”

viii. Enforcement Section’s Request for More Information on January 5, 2016

58. Because a previous engagement letter between BKD and DBC required that DBC not associate BKD’s name with the financial reports that BKD helped prepare, the Enforcement Section requested that DBC produce financial reports for which BKD, or another accounting firm, would permit their name to be associated and would certify the financial reports as being compliant with GAAP.
59. The Enforcement Section requested a narrative for DBC’s use of the alleged capital lease rental property, support for the valuation of the rental property on DBC’s balance sheet, and clarification about which of the varying documents they produced about the property was controlling (lease agreement, resolution to buy the residence with assumption of mortgage, and lease to purchase option agreement).
60. The Enforcement Section requested legal authority to support Bagwell’s theory that Bagwell or DBC was not in violation of Missouri’s regulations prohibiting the taking of loans from advisory clients.

ix. DBC's February 18, 2016 Response

61. DBC and Bagwell, through counsel, submitted a reply to the Enforcement Section.
62. DBC and Bagwell stated, among other things, that BKD will not certify the financials submitted to the Exams and Enforcement Sections since "BKD was not retained to perform an audit or to prepare audited financial statements. Under those circumstances, BKD's position is that it cannot associate its name with the statements. Equally, BKD states that GAAP Standards do not apply to its work because those standards are triggered only where more formal action such as an audit is performed."
63. In response to the Enforcement Section's request that DBC provide a narrative of the use of the capital lease property, and provide an independent valuation and any supporting documents, Bagwell responded that "[t]he property is residential and has been rented. There is no appraisal or independent valuation of the property. BKD assisted in the initial valuation of the property at \$124,500, \$20,000 of which was allocated to the land and \$104,500 to the property. According to BKD, there is no reason to adjust the valuation annually for depreciation, but there is a concept called 'net book value' (historical cost, net of depreciation). That value was \$96,415 as of December 31, 2014." Bagwell and DBC did not elaborate as to how BKD "assisted" in the initial valuation of the property.
64. No documents were produced clarifying which of the three documents related to the residential property was controlling other than saying that the property "has been rented."
65. DBC and Bagwell "found no such authority" for the proposition that a loan from an advisory client was not in violation of the Missouri regulations because the loan was made for a business rather than for personal purposes.
66. A review of DBC's website, at douglasbagwell.com, indicates that some time since the audit on April 30, 2012, certain questionable links and/or purported services scrutinized by the Exams Section and the Enforcement Section have been removed.

II. COMMISSIONER'S DETERMINATIONS AND FINDINGS

Count I – Multiple Violations of Failing to Make a Correcting Amendment to Inaccurate Applications as to Bagwell

67. **THE COMMISSIONER DETERMINES** that Respondent Bagwell failed to make a correcting amendment to inaccurate applications in violation of Section 409.4-406(b), RSMo (Cum. Supp. 2013).¹
68. Bagwell filed an initial Form U4 for registration as an IAR in Missouri on May 11, 2005.
69. Bagwell became registered in Missouri as an IAR on August 30, 2005.

¹ Unless otherwise specified, all statutory references are to the 2013 cumulative supplement to the Revised Statutes of Missouri.

70. On April 23, 2003, a judgment and subsequent garnishment in the amount of \$1,433.11 was entered against Bagwell in *Asset Acceptance, LLC v. Douglas R. Bagwell*, case number 31303AC1729, Circuit Court of Green County, Missouri. The judgment was satisfied on December 18, 2006.
71. In Form U4 filings under question 14M that asks, “Do you have any unsatisfied judgements or liens against you?” Bagwell answered “no” on May 11, 2005; July 13, 2005; July 15, 2005; and August 12, 2005.
72. Section 409.4-406(b) requires Bagwell to promptly file a correcting amendment to his application when it became inaccurate or incomplete in any material respect.
73. 15 CSR 30-51.160(3)(A) further defines “promptly” as it relates to correcting amendments for registered persons as “not later than thirty (30) days following the specified event or occurrence.”
74. Bagwell failed to file correcting amendments to his applications within 30 days disclosing the abovementioned judgment in violation of Section 409.4-406(b).
75. Bagwell’s failures to promptly file a correcting amendment to multiple applications disclosing the above judgment constitute multiple violations of Section 409.4-406(b), and such conduct is, therefore, subject to the Commissioner’s authority under Section 409.6-604.

**Count II – Multiple Violations of Failing to Keep Books and Records
and/or Materially Aiding in the Violations Thereof as to DBC and Bagwell**

76. **THE COMMISSIONER FURTHER DETERMINES** that Respondents DBC and Bagwell failed to keep books and records as required by Section 409.4-411(c)(1) and (3) and/or materially aided in the violations thereof.
77. DBC was the subject of an exam on April 30, 2012, and the Exams Section uncovered multiple problems with DBC’s financial reports, including that they were not prepared in compliance with Missouri’s regulations.
78. DBC through Bagwell engaged the services of BKD to help revise DBC’s financial statements. The scope of BKD’s services were limited in such a way that BKD’s name was not permitted to be associated with DBC’s “internal financial statements” and BKD’s services were “not intended to be an audit, review or compilation of financial statements in accordance with standards issued by the American Institute of Certified Public Accountants.”
79. Despite the limitation of BKD’s engagement, Bagwell submitted these financial reports to the Securities Division.

80. In addition to the Exams Section request for compliant financial reports, the Enforcement Section requested GAAP compliant financial statements from DBC on at least two other occasions, once on June 22, 2015, and again on January 5, 2016.
81. DBC gave conflicting representations to the Enforcement Section by stating that DBC's accounting method "was confirmed and continued by BKD"; but on a later occasion, DBC represented that BKD would not certify the financials submitted to the Exams and Enforcement Sections since BKD "was not retained to perform an audit to prepare audited financial statements. Under those circumstances, BKD's position is that it cannot associate its name with the statements. Equally, BKD states that GAAP Standards do not apply to its work because those standards are triggered only where more formal action such as an audit is performed."
82. Despite multiple requests from the Exams Section and the Enforcement Section, neither has been able to obtain certified, GAAP-compliant financial statements from DBC in the last four years.
83. In addition, the Exams Section and the Enforcement Section were not given adequate supporting documents to justify DBC's characterization and valuation of a rental property on its balance sheet.
84. DBC submitted three different documents showing the residence as either being purchased by DBC for \$1, being leased to DBC, or being the subject of a lease with an option to purchase agreement.
85. In explaining how the property was valued, DBC informed the Enforcement Section that there "is no appraisal or independent valuation of the property. BKD assisted in the initial valuation of the property at \$124,500, \$20,000 of which was allocated to the land and \$104,500 to the property." However, DBC did not explain how BKD "assisted" in the "initial valuation."
86. Section 409.4-411(c)(1) and (c)(3) imposes a duty on DBC to keep and maintain adequate records of the accounts, correspondence, memoranda, papers, books, and other records required by rule adopted or order issued under the Missouri Securities Act of 2003 ("Act").
87. 15 CSR 30-50.010, 30-50.040, and 30-51.140(1)(B) and (F) further explain the types of records that DBC was required to keep under Section 409.4-411(c)(1) and (c)(3). These provisions required that DBC keep financial statements that are certified by an independent certified public accountant in accordance with GAAP.
88. Respondents failed to maintain adequate records to support the tax characterization of a residence on DBC's financial statements and failed to produce GAAP compliant financial statements since at least 2012 in violation of Section 409.4-411(c)(1) and (c)(3).

89. Respondents' conduct constitutes multiple violations and/or materially aiding in multiple violations of Section 409.4-411(c)(1) and (c)(3), and such conduct is, therefore, subject to the Commissioner's authority under Section 409.6-604.

Count III – Multiple Violations of Engaging in Dishonest or Unethical Practices as to DBC and Bagwell; and Multiple Violations of Willfully Violating or Willfully Failing to Comply with the Act as to Bagwell

90. **THE COMMISSIONER FURTHER DETERMINES** that Respondents DBC and Bagwell engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous ten years, in violation of Section 409.4-412(d)(13).
91. On December 18, 2012, the DBC website referenced the Chartered Financial Analyst Institute Code of Ethics and Standards of Professional Conduct and contained a copy of those standards on its website.
92. The Enforcement Section contacted the CFA Institute and learned that Bagwell has never been awarded a charter as a CFA.
93. As of October 16, 2009, DBC's website contained statements suggesting DBC offered a product called "Bagwell's No-Load Annuity," that was created as an arrangement with Ameritas Direct and Jefferson National.
94. Despite the representations about "Bagwell's No-Load Annuity" on its website, the Enforcement Section and the Exams Section were told by DBC through Bagwell that "DBC does not have a separate agreement with annuity sponsors, such as Ameritas Direct and Jefferson National. Consequently, we have no contractual arrangement to provide you..."
95. As of October 16, 2009, DBC's website stated that DBC professionals could specialize their advice in capital markets, venture capital, corporate finance, financial restructuring, mergers and acquisitions, private equity and structured products.
96. During this same time, Bagwell regularly held himself out as being able to provide investment banking services including offering investment banking services on his business cards.
97. Despite the representations about Bagwell's investment banking qualifications, the Enforcement Section and the Exams Section found that Bagwell had not been affiliated with a broker-dealer since 2001, nor had he passed the IB Exam, an exam that, according to FINRA, "assesses the competency of an entry-level registered representative to perform his or her job as an investment banker."
98. 15 CSR 30-51.172(1)(J) and (S) provide as grounds for discipline or disqualification of an IA or IAR when such person has made misleading advertisements and/or

misrepresented “to any client or prospective client the qualifications of the adviser or its employees, or to misrepresent the nature of the advisory services being offered or fees to be charged for such services, or to omit to state a material fact necessary to make the statements made regarding qualifications, services, or fees, in light of the circumstances under which they are made, not misleading.”

99. In addition to these misrepresentations and/or omissions, DBC through Bagwell took multiple loans from advisory clients. For example, MR1 and MR2 were advisory clients who signed advisory agreements with DBC and also invested in notes in DBC.
100. 15 CSR 30-51.172(1)(G) provides as grounds for discipline or disqualification of an IA or IAR “the borrowing of money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds.”
101. Respondents committed multiple violations of Section 409.4-412(d)(13) by engaging in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous ten years.
102. Respondents’ violations of Section 409.4-412(d)(13) constitute grounds to discipline Respondents and such conduct is, therefore, subject to the Commissioner’s authority under Section 409.4-412.
103. **THE COMMISSIONER FURTHER DETERMINES** that Respondent Bagwell willfully violated or willfully failed to comply with the Act or the predecessor act or a rule adopted or order issued under the Act or the predecessor act within the previous ten years in violation of Section 409.4-412(d)(2).
104. Bagwell was subject to a Consent Order issued by the Commissioner on July 8, 2005, for, among other things, engaging in unregistered activity (see AP-05-28).
105. Nevertheless, Bagwell continued to transact business and represent DBC in effecting or attempting to effect purchases or sales of DBC’s securities with MR1, MR2, and MR3 through his sale of promissory notes, stock and by effectuating a debt-to-equity conversion in 2013.
106. Bagwell willfully engaged in unregistered activity or willfully failed to comply with the prohibition from engaging in unregistered activity in violation of Section 409.4-412(d)(2).
107. Bagwell’s conduct in violation of Section 409.4-412(d)(2) constitutes grounds to discipline Bagwell and such conduct is, therefore, subject to the Commissioner’s authority under Section 409.4-412.

Count IV - Multiple Violations of Making an Untrue Statement, Omitting to State Material Facts, or Engaging in an Act, Practice, or Course of Business that Would Operate as a Fraud or Deceit Upon Another Person in Connection with the Offer, Sale, or Purchase of a Security, and/or Materially Aiding in Multiple Violations Thereof, as to DBC and Bagwell

108. **THE COMMISSIONER FURTHER DETERMINES** that Respondents DBC and Bagwell made untrue statements, omitted to state material facts, or engaged in an act, practice, or course of business that would operate as a fraud or deceit upon another person in connection with the offer, sale, or purchase of a security regarding the debt-to-equity conversion, in violation of Section 409.5-501, and/or materially aided in multiple violations thereof.
109. On December 26, 2012, Bagwell wrote a letter to the Exams Section in which he stated: “the company’s net capitalization was -\$10,308. In consulting with BKD and our legal counsel we are currently converting these notes into preferred equity with the company. These forms are attached and as of the date of this letter we have already converted [a note] bringing the net capitalization of the company up by \$20,000. We intend to have these completed by January 31, 2013.”
110. Bagwell produced to the Enforcement Section a copy of a “private placement memorandum” dated December 20, 2012, and various debt-to-equity conversion agreements for Missouri residents.
111. Even though DBC’s own analysis showed they had a negative net worth, the debt-to-equity conversion agreement states that “the Company may *increase its positive net capitalization* requirements as a Registered Investment Adviser[.]” (emphasis added).
112. The debt-to-equity conversion agreement states “[t]he Company’s wishes to deleverage its balance sheet by converting these notes into preferred equity.”
113. The debt-to-equity conversion agreement states that the Company was authorized to issue 150 shares of Preferred stock. However, the private placement memorandum states that 200 shares were authorized to be issued.
114. The debt-to-equity conversion agreement warrants that “no broker, finder or investment banker is entitled to any brokerage, finder’s or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company other than the fees of any investment banking firm that has been engaged by the Company to render the Fairness Opinion (defined below), the fees of which will be paid by the Company.”

However, the private placement memorandum describes a \$10,000 commission from the offering of stock noting that “one or more registered broker-dealers may act as placement agent to assist in the placement of the Shares. In addition to a placement agent fee of 2.0%, any broker-dealer who assists in the placement of this offering will receive a sales

commission of up to 7.0% of the purchase price sold by such broker-dealer.” There is also reference to a due diligence reimbursement of 1.0% for a broker-dealer, and the memorandum states that “[b]efore any additional fees and expenses incurred by the Company for legal and other professional services connected with the offering” in reference to commissions and net proceeds.

115. The debt-to-equity conversion agreement states that “Since May 20, 2005, and except as disclosed in the SEC filings, [DBC] has conducted its business in compliance in all material respects with all applicable laws, rules, regulations, court or administrative orders and processes and rules, directives and orders of regulatory and self-regulatory agencies and bodies, except as would not reasonably be expected, singly or in the aggregate, to be materially adverse to the business, assets or financial condition of the Company.”

However, at the time of the conversion, DBC was not in compliance “in all material respects with all applicable regulations” because, among other problems, DBC’s own financial reports showed that DBC was in violation of the net worth requirement in the State of Missouri.

116. The debt-to-equity conversion agreement and the private placement memorandum omitted to disclose that DBC risked losing its registration if investors did not convert their debt to equity.
117. In both the debt-to-equity conversion agreement and the private placement memorandum, DBC references being exempt under Regulation D. However, the Enforcement Section could not find any filings after a search of the SEC’s Edgar database. The Enforcement Section also found that DBC’s website generally solicited investors to buy “preferred stock” and featured an opportunity for DBC to “forward our Private Offering Memorandum to you” at the time of the debt-to-equity conversion.
118. In the private placement memorandum, DBC describes the use of the proceeds to add working capital and to “seek expansion in addition to other private equity acquisitions through direct purchase or through other affiliated private funds. Proceeds not used immediately will be held with the corporate capital reserves.”
119. In the private placement memorandum, DBC discloses that the shares would rank junior to existing debt; however, DBC does not disclose this risk in the debt-to-equity conversion agreement.
120. In connection with the offer, sale, or purchase of securities, directly or indirectly, DBC through Bagwell made untrue statements of material fact or omitted to state material facts necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading and/or engaged in an act, practice, or course of business that would operate as a fraud or deceit upon another person in violation of Section 409.5-501.

121. Respondents' conduct in violation of Section 409.5-501 constitutes engaging in an illegal act, practice, or course of business, and such conduct is, therefore, subject to the Commissioner's authority under Section 409.6-604.

Count V - Multiple Violations of Making False or Misleading Filings as to Bagwell

122. **THE COMMISSIONER FURTHER DETERMINES** that Respondent Bagwell made multiple false or misleading filings in violation of Section 409.5-505.
123. Section 14 of the Form U4 comprises the "Disclosure Questions" section of the form and contains, among other things, questions related to an applicant's or registrant's criminal history, history of regulatory actions, and financial disclosures.
124. Question 14 M asks specifically, "Do you have any judgments or liens against you?" and provides a "yes/no" answer option.
125. On April 23, 2003, a judgment and subsequent garnishment in the amount of \$1,433.11 was entered against Bagwell in *Asset Acceptance, LLC v. Douglas R. Bagwell*, case number 31303AC1729, in the Circuit Court of Greene County, Missouri. The judgment was satisfied on December 18, 2006.
126. Bagwell's response to question 14 M was "no" when he filed amendments to his Form U4 on May 11, 2005; July 13, 2005; July 14, 2005; and August 12, 2005, despite the outstanding judgment in favor of Asset Acceptance, LLC.
127. On multiple occasions, Bagwell made or caused to be made, in a record that is used in an action or proceeding or filed under the Act, a statement that, at the time and in light of the circumstances under which it is made, is false or misleading in a material respect, or, in connection with the statement, to omit to state a material fact necessary to make the statement made, in light of the circumstances under which it was made, not false or misleading in violation of Section 409.5-505.
128. Bagwell's conduct in violation of Section 409.5-505 constitutes an illegal act, practice, or course of business and such conduct is, therefore, subject to the Commissioner's authority under Section 409.6-604.

Count VI - Multiple Violations of Offering or Selling an Unregistered Security and/or Materially Aiding in Committing Multiple Violations Thereof as to DBC and Bagwell

129. **THE COMMISSIONER FURTHER DETERMINES** that Respondents DBC and Bagwell offered and/or sold unregistered securities, in violation of Section 409.3-301, and/or materially aided in violations thereof.
130. Bagwell represented DBC in effecting or attempting to effect purchases or sales of DBC's securities with MR1, MR2, and MR3 through his sale of multiple promissory notes and shares of stock in DBC.

131. DBC and Bagwell produced documents to the Enforcement Section that indicated that DBC was relying on a “Regulation D” exemption from registration. However, the Enforcement Section could not find any form D filings for DBC on the SEC’s Edgar database.
132. DBC and Bagwell later claimed to be relying upon the exemption provided under Section 409.2-202(14) which exempts a sale or an offer to sell securities from the registration requirement, if part of a single issue in which: “(A) Not more than twenty-five purchasers are present in this state during any twelve consecutive months, other than those designated in paragraph (13); (B) A general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities; (C) A commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this act or an agent registered under this act for soliciting a prospective purchaser in this state; and (D) The issuer reasonably believes that all the purchasers in this state, other than those designated in paragraph (13), are purchasing for investment.”
133. At times relevant to the offering of securities in DBC in this Count, DBC through Bagwell had an investor relations section of DBC’s website that advertised the sale of “senior notes” and shares of preferred stock in DBC.
134. Respondents offered and/or sold unregistered securities in Missouri in violation of Section 409.3-301.
135. Respondents’ conduct in violation of Section 409.3-301 constitutes an illegal act, practice, or course of business and such conduct is, therefore, subject to the Commissioner’s authority under Section 409.6-604.

**Count VII – Multiple Violations of Transacting Business as
an Unregistered Agent as to Bagwell**

136. **THE COMMISSIONER FURTHER DETERMINES** that Respondent Bagwell transacted business as an unregistered agent in violation of Section 409.4-402(a).
137. Bagwell is not registered as an agent in Missouri, but he transacted business and represented DBC in effecting or attempting to effect purchases or sales of DBC’s securities with MR1, MR2, and MR3, through his sale of promissory notes, stock, and by effectuating a debt-to-equity conversion in 2013, in violation of Section 409.4-402(a).
138. Bagwell’s conduct in violation of Section 409.4-402(a) constitutes an illegal act, practice, or course of business and such conduct is, therefore, subject to the Commissioner’s authority under Section 409.6-604.

Count VIII – Violation of Employing an Unregistered Agent as to DBC

139. **THE COMMISSIONER FURTHER DETERMINES** that Respondent DBC employed

an unregistered agent in violation of Section 409.4-402(d).

140. Since the creation of DBC, Bagwell has been employed as the Chief Executive Officer of DBC.
141. Bagwell is not registered as an agent in Missouri, but he transacted business and represented DBC in effecting or attempting to effect purchases or sales of DBC's securities with MR1, MR2, and MR3 through his sale of promissory notes, stock, and by effectuating a debt-to-equity conversion in 2013.
142. DBC employed or associated with Bagwell, who transacted business in Missouri as an agent without being registered, in violation of Section 409.4-402(d).
143. DBC's conduct in violation of Section 409.4-402(d) constitutes an illegal act, practice, or course of business and such conduct is, therefore, subject to the Commissioner's authority under Section 409.6-604.
144. This order is in the public interest and is consistent with the purposes of the Missouri Securities Act of 2003. See Section 409.6-605(b).

III. ORDER

NOW, THEREFORE, it is hereby ordered that Respondents, their agents, employees and servants, and all other persons participating in or about to participate in the above-described violations with knowledge of this order be prohibited from violating or materially aiding in any violation of:

- A. Section 409.3-301 by offering or selling any securities as defined by Section 409.1-102(28), in the State of Missouri, unless those securities are registered with the Securities Division of the Office of the Secretary of State in accordance with the provisions of Section 409.3-301;
- B. Section 409.4-402(a) by transacting business as an unregistered agent;
- C. Section 409.4-402(d) by employing an unregistered agent;
- D. Section 409.4-406(b) by failing to make a correcting amendment to inaccurate applications;
- E. Section 409.4-411(c)(1) and (3) by failing to keep required books and records;
- F. Section 409.5-501 by making untrue statements, omitting to state material facts, or engaging in an act, practice, or course of business that would operate as a fraud or deceit upon another person in connection with the offer, sale, or purchase of a security; and
- G. Section 409.5-505 by making false and misleading filings.

IV. STATEMENT

Pursuant to Section 409.4-412, the Commissioner hereby states that he will determine whether to grant the Enforcement Section's requests for:

- A. \$50,000 civil penalty against each Respondent for multiple violations of Section 409.4-412;
- B. an order censuring Respondents for multiple violations of Section 409.4-412; and
- C. an order barring and/or conditioning or limiting the registrations of Respondents for multiple violations of Section 409.4-412.

Pursuant to Section 409.6-604, the Commissioner hereby states that he will determine whether to grant the Enforcement Section's requests for:

- A. \$10,000 civil penalty against each Respondent for multiple violations and/or materially aiding in multiple violations of Section 409.3-301;
- B. \$1,000 civil penalty against Respondent Bagwell for violating Section 409.4-402(a);
- C. \$1,000 civil penalty against Respondent DBC for violating Section 409.4-402(d);
- D. \$10,000 civil penalty against Respondent Bagwell for multiple violations of Section 409.4-406(b);
- E. \$10,000 civil penalty against Respondent DBC for multiple violations of Section 409.4-411(c)(1) and (c)(3);
- F. \$10,000 civil penalty against each Respondent for multiple violations and/or materially aiding in multiple violations of Section 409.5-501;
- G. \$10,000 civil penalty against Respondent Bagwell for multiple violations of Section 409.5-505; and
- H. an order against Respondents to pay the costs of the investigation in this proceeding, after a review of evidence of the amount submitted by the Enforcement Section.

[This section intentionally left blank.]

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,
MISSOURI THIS ELEVENTH DAY OF OCTOBER, 2016.



JASON KANDER
SECRETARY OF STATE

Andrew M. Hartnett

ANDREW M. HARTNETT
COMMISSIONER OF SECURITIES



STATE OF MISSOURI
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF:)	
)	
DOUGLAS BAGWELL; and)	
DOUGLAS BAGWELL & CO., LLC,)	
)	
<i>Respondents.</i>)	Case No. AP-16-28
)	
Serve: Douglas Bagwell at:)	
3924 N. Broadway Avenue)	
Springfield, Missouri 65803)	
)	
Douglas Bagwell & Co., LLC at:)	
2200 East Sunshine Street, Suite 324)	
Springfield, Missouri 65804)	

NOTICE

TO: Respondents and any unnamed representatives aggrieved by this Order:

You may request a hearing in this matter within thirty (30) days of the receipt of this Order pursuant to Sections 409.6-604(b), 409.4-412(f), RSMo. (Cum. Supp. 2013), and 15 CSR 30-55.020.

Within fifteen (15) days after receipt of a request in a record from a person or persons subject to this order, the Commissioner will schedule this matter for a hearing.

A request for a hearing must be mailed or delivered, in writing, to:

Andrew M. Hartnett, Commissioner of Securities
Office of the Secretary of State, Missouri
600 West Main Street, Room 229
Jefferson City, Missouri, 65102

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of October, 2016, a copy of the foregoing Order to Cease and Desist and Order to Show Cause why Respondents Should not be Censured, and why Civil Penalties, Costs, and Other Administrative Relief Should not be Imposed in the above-styled case was **mailed by certified U.S. mail to:**

Douglas Bagwell
3924 N. Broadway Avenue
Springfield, Missouri 65803

Douglas Bagwell & Co., LLC
2200 East Sunshine Street, Suite 324
Springfield, Missouri 65804

and

Lowell Pearson
Husch Blackwell
P.O. Box 1251
235 East High Street
Jefferson City, Missouri 65101-1251

and by hand-delivery to:

Ryan D. Smith
Enforcement Counsel
Missouri Securities Division



Marsha Presley
Securities Office Manager